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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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John F Wetling

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EXAMINER

PATTON, AMANDA K

ART UNIT

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**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/523,529	<b>Applicant(s)</b> WETLING, JOHN F	
	<b>Examiner</b> Amanda Patton	<b>Art Unit</b> 3762	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 17 October 2007.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 7-20 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 7-20 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 17 October 2007 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                     | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

## **DETAILED ACTION**

### ***Response to Amendment***

Applicant's amendment dated October 12, 2007 has been acknowledged. In response to the amendment to the drawings, the objections to the drawings have been withdrawn. In response to the amendment to the specification, the objections regarding the arrangement of the specification and the abstract have been withdrawn. Currently claims 7-20 are pending in this application.

### ***Priority***

Receipt is acknowledged of papers submitted under 35 U.S.C. 119(a)-(d), which papers have been placed of record in the file.

However, disclosure of the invention in the foreign priority application must be sufficient to comply with the requirements of the first paragraph of 35 U.S.C. 112. See *Transco Products, Inc. v. Performance Contracting, Inc.*, 38 F.3d 551, 32 USPQ2d 1077 (Fed. Cir. 1994).

The disclosure of the prior-filed application, PCT/DK03/00523 fails to provide adequate support or enablement in the manner provided by the first paragraph of 35 U.S.C. 112 for one or more claims of this application. Claims 12-13 are not supported by the prior filed application, as there is no mention of "electrically isolating the patient from ground" or "spraying an area of a patient with ions".

### ***Specification***

The disclosure is objected to because of the following informalities: The specification, as currently amended, does not describe any portion of the claimed invention. Additionally, the specification does not refer to any of the reference characters (1-5) found in Figure 5.

Appropriate correction is required.

### ***Claim Objections***

**Claims 7-20** are rejected for the following informalities:

- Claims 7-20 refer to various spellings of a “feed back unit”, a “feedback unit”, and a “feed-back unit”. These should be changed so as to refer to the same object.
- Claim 7 refers to "a feed back unit and object to be treated". It is suggested to replace this phrase with "a feed back unit and an object to be treated".

### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

**Claims 7-20** are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention, as the specification, as amended,

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contains no mention of the claimed invention. Additionally, it is unclear how the electrical cable of the claimed invention is “adapted to maintain an electrical potential of the object to be treated” as no accompanying description of Figure 5 is given.

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter, which the Applicant regards as his invention.

**Claims 7-11 and 13-20** are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which Applicant regards as the invention.

- Claim 7 refers to "a feed back unit" in line 5. It is unclear if this is the same feed back unit as referenced in line 3 or a different feedback unit.
- Claim 13 needs to be in the active voice given that it is a method claim.

### ***Claim Rejections - 35 USC § 102/103***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office Action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the Applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the Applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

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The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 7, 9 and 11-13 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Copus, UK Patent Application GB 2 246 955 A.

Regarding **claims 7, 9 and 11–13**, Copus discloses a negative ion generator, an electrical cable attachable between a feedback unit and an object to be treated, a feedback unit (e.g., FIGURE 1; page lines 1–2 where it is the Examiner’s position that the current-limiting devices functions as a back feed/feed-back unit; page 3, last two lines);

and an insulating cover adapted to be positionable beneath the object (e.g., FIGURE 3, element M, bed; page 2, lines 26–29 where it is the Examiner’s position that it is inherent for the bed to be an insulating cover in order for the apparatus to properly generate and distribute the ions as disclosed by Copus);

electrically isolating a patient (e.g., page 2, lines 6–9); spraying an area of a patient with ions (e.g., page 2, lines 11–17). [It is noted that Applicant does not define or specify what spraying is, nor how spraying is executed. Consequently, it is the Examiner’s position that Copus’ method of generating the negative air ions is a spraying method.]

In the alternative, it would have an obvious matter of design choice to a person of ordinary skill in the art to modify the system and method as taught by Copus with a separate feedback unit located between the power unit and the object, because Applicant has not disclosed

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that this arrangement provides an advantage, is used for a particular purpose, or solves a stated problem. One of ordinary skill in the art, furthermore, would have expected Applicant's invention to perform equally well with the feedback as taught by Copus, because it provides a reliable feedback unit and since it appears to be an arbitrary design consideration which fails to patentably distinguish over Copus. Therefore, it would have been an obvious matter of design choice to modify Copus to obtain the invention as specified in the claims.

It is also the Examiner's position that the device of Copus controls the dose of ions on the object, as required by the claim, regardless of whether the object to be treated would only be exposed to a portion of the ions.

Claims 7-19 are rejected under 35 U.S.C. 102(e) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Gisel (USPN 6,549,808, as previously cited).

Regarding **claims 7, 9 and 12-14**, Gisel et al. disclose a negative ion generator, an electrical cable adapted to be placed between a feedback unit and an object to be treated, (e.g., FIGS. 1-5; ABSTRACT, lines 11-14), a feedback unit (e.g., element 52, regulator) and an insulating cover (e.g., element 18, flexible plastic material); electrically isolating a patient (e.g., column 3, lines 21-23; column 5, lines 7-9); spraying an area of a patient with ions (e.g., ABSTRACT, lines 11-14; column 3, lines 25-26 and 36-38).

It is the Examiner's position that the insulating cover of Gisel is capable of being placed beneath the object being stimulated, as the term "beneath" is a relative term. If the patient was lying on their stomach the insulating cover would be beneath the patient.

It is also the Examiner's position that the feedback unit of Gisell is located in between the power unit (e.g. battery 40) and the object (e.g. electrodes 20 and 22 connected to the patient) and is capable of controlling an exposure and dose of ions to the object being treated, as the providing of an increased voltage differential IS controlling the exposure and dose of ions to the object being treated.

In the alternative, it would have an obvious matter of design choice to a person of ordinary skill in the art to modify the system and method as taught by Gisell with a separate feedback unit located between the power unit and the object, because Applicant has not disclosed that this arrangement provides an advantage, is used for a particular purpose, or solves a stated problem. One of ordinary skill in the art, furthermore, would have expected Applicant's invention to perform equally well with the feedback as taught by Gisell, because it provides a reliable feedback unit and since it appears to be an arbitrary design consideration which fails to patentably distinguish over Gisell. Therefore, it would have been an obvious matter of design choice to modify Gisell to obtain the invention as specified in the claims.

Regarding **claims 8, 10, 15 and 16**, Gisell et al. disclose monitor a number of discharged ions per unit of a time measure (e.g., column 3, lines 39–41; column 5, lines 35–37).

Regarding **claims 11 and 17–19**, Gisell et al. disclose keep an object at a specific potential (e.g. column 3, line 33).

### ***Response to Arguments***

Applicant's arguments with respect to claims 7-20 have been considered but are moot in view of the new ground(s) of rejection.



***Conclusion***

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Amanda Patton whose telephone number is (571) 270-1912. The examiner can normally be reached on Monday - Friday, 8:30am - 5:00pm, EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Angela Sykes can be reached on (571) 272-4955. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/AKP/  
Examiner, Art Unit 3762

/George R Evanisko/  
Primary Examiner, Art Unit 3762

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